

102 KAR 1:032. Bona fide retirement.

RELATES TO: KRS 161.420(5), 161.540(2), 161.605, 161.677, 161.700(4), 26 U.S.C. 401(a), 414(h), 26 C.F.R. 1.401-1, 1.401(a)-1

STATUTORY AUTHORITY: KRS 161.310, 161.716

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.310 requires the Board of Trustees of Teachers' Retirement System (TRS) to promulgate administrative regulations for the administration of funds of the retirement system. KRS 161.716 requires the board to promulgate administrative regulations as are necessary to remove any conflicts with federal law. TRS is a qualified plan under Section 401(a) et seq. of the Internal Revenue Code. As a qualified plan, member contributions are "picked-up" contributions under IRC Section 414(h) and made to TRS on a tax-deferred basis. This administrative regulation establishes guidelines to help ensure that a bona fide retirement has occurred under federal law before a member returns to employment with a TRS-participating employer. This administrative regulation is necessary to help maintain compliance with federal tax law and the qualified status of TRS under IRC Section 401(a) et seq.

Section 1. Definitions. (1) "Bona fide retirement" means a complete cessation of all employment relationships between the member and any participating employer, regardless of whether the position is one that participates in TRS, and that there shall be no prearranged agreement prior to retirement between the member and any participating employer that the member will be reemployed or otherwise return to work for the employer in any capacity.

(2) "Break in service" means the period of time required under KRS 161.605(7)(a)-(b) during which the member shall have a complete separation from service before becoming reemployed with any participating employer.

(3) "Participating employer" means an employer that participates in TRS pursuant to KRS 161.220(4).

(4) "Reemployed" and "Reemployment," unless indicated otherwise in this administrative regulation, shall mean employment as defined by KRS 161.220(12) following retirement with a participating employer and shall include both paid and unpaid employment and full-time, part-time, temporary, seasonal, voluntary, and hourly employment.

(5) "Reemployment date" means the first date that the member is reemployed after their retirement date.

(6) "Retirement date" means the member's most recent effective retirement date with TRS.

Section 2. (1) A retired member may not be reemployed unless he or she has first experienced a bona fide retirement with the appropriate break in service, as provided in KRS 161.605(7)(a) or (b), prior to reemployment. Failure to do so shall void the member's retirement and require the return of all benefits with interest as provided under KRS 161.605(7)(c). This requirement applies to all members and participating employers.

(2) The period of time established for the break in service shall be measured from the member's retirement date to the member's reemployment date.

Section 3. (1) There shall be no prearranged agreement, prior to retirement, between the member and any participating employer that the member shall be reemployed or otherwise return to work in any capacity after retirement.

(2) A retired member shall not be reemployed by a participating employer, unless prior to reemployment both the member and the participating employer have certified that there was no prearranged agreement prior to retirement between the member and the employer that the

member would be reemployed. This requirement applies to both reemployment in positions that participate in TRS and those that do not.

Section 4. (1) The member and participating employer shall complete and file with TRS Form 10-C prior to reemployment of that retired member. If the member has been retired twelve (12) months or longer following his or her retirement date, the member and participating employer shall not be required to file Form 10-C.

(2) A participating employer shall complete and file Form 30-E with TRS prior to reemployment of any retired member who is returning to work in a position that the employer deems to be a position that is not required to contribute to TRS.

Section 5. Incorporation by Reference. (1) Form 10-C, "Reemployment Certification", 06/17/2019; and

(2) Form 30-E, "Employment Limitations Exemption Request", 06/17/2019.

(3) This material may be inspected, copied, or obtained, subject to applicable copyright law, at Teachers' Retirement System, 479 Versailles Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 5 p.m. (46 Ky.R. 778, 1410; eff. 12-6-2019.)